## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

ASHFAQ HUSSAIN SYED,	)
SHELLY RENEE BRANCH,	)
A.M.S., by Next Friend Ashfaq Hussain Syed, and	)
N.G.S., by Next Friend Ashfaq Hussain Syed,	
	)
Plaintiffs,	)
	)
v.	) Case No.: 4:20-cv-00407-MTS
FRONTIER AIRLINES, INC. and	) District Judge Matthew T. Schelp
HALLMARK AVIATION SERVICES, L.P.,	)
,,,,,,	)
Defendants.	)

## DEFENDANT FRONTIER AIRLINES, INC.'S MOTION TO JOIN AND ADOPT DEFENDANT HALLMARK AVIATION SERVICES, L.P.'S MOTION TO DISMISS AND MOTION TO STRIKE (ECF Nos. 10, 11)

Defendant FRONTIER AIRLINES, INC. ("Frontier"), by its undersigned attorneys, pursuant to Fed. R. Civ. P. 10(c), moves to join and adopt Defendant Hallmark Aviation Services, L.P.'s Motion to Dismiss and Motion to Strike (ECF Nos. 10, 11) filed pursuant to Fed. R. Civ. P. 12(b)(6) and 12(f), and states as follows:

1. This civil action arises from an incident that occurred on July 15, 2018 during the boarding of Frontier Flight 87 from St. Louis, Missouri to Las Vegas, Nevada at St. Louis Lambert International Airport. On May 30, 2019, Plaintiffs Ashfaq Hussain Syed, Shelly Renee Branch, A.M.S. by Next Friend Ashfaq Hussain Syed, and N.G.S. by Next Friend Ashfaq Hussain Syed (collectively "Plaintiffs") filed a six-count Complaint in the 21<sup>st</sup> Judicial Circuit Court, St. Louis County, Missouri against Frontier alleging negligence, negligence *per se*, intentional tort, false imprisonment, and breach of contract claims.

- 2. On July 23, 2019, Frontier removed this case to this Court based on diversity jurisdiction. (Case no. 4:19-cv-02125-NAB, ECF No. 1.)
- 3. On July 30, 2019, Frontier filed its Partial Motion to Dismiss and Motion to Strike Plaintiffs' Complaint. (Case no. 4:19-cv-02125-NAB, ECF Nos. 7, 8.)
- 4. On August 22, 2019, before ruling on Frontier's motions, this Court remanded this case to the 21<sup>st</sup> Judicial Circuit Court, St. Louis County, Missouri. (Case no. 4:19-cv-02125-AGF, ECF No. 16.)
- 5. On January 28, 2020, Plaintiffs filed an Amended Complaint in state court and added Hallmark Aviation Services, L.P. ("Hallmark Aviation") as a defendant to this lawsuit. (Case no. 4:20-cv-00407-MTS, ECF No. 6.)
- 6. On March 18, 2020, Hallmark Aviation timely removed this case to this Court based on diversity jurisdiction. (ECF No. 1.)
- 7. On March 20, 2020, Hallmark Aviation filed a Motion to Dismiss and Motion to Strike Plaintiffs' Amended Complaint. (ECF Nos. 10, 11.) On April 16, 2020, Plaintiffs filed their Opposition to Hallmark Aviation's motions. (ECF No. 19.) On April 25, 2020, Hallmark Aviation filed its Reply in support of its motions. (ECF No. 20.)
- 8. Hallmark Aviation's motions are fully briefed and currently under this Court's consideration.
- 9. Pursuant to Fed. R. Civ. P. 10(c), Frontier now joins Hallmark Aviation's motions, adopting by reference each and every statement and argument set forth therein.
- 10. If Hallmark Aviation's motions are granted, Plaintiffs' claims against Frontier should likewise be dismissed because the arguments raised by Hallmark Aviation apply equally to Plaintiffs' claims against Frontier. All of Plaintiffs' claims, including their claim for punitive

damages, are preempted by the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1). Alternatively, Counts II<sup>1</sup> (negligence *per se*), III (failure to use highest degree of care), and IV (intentional tort) should be dismissed because they fail to state viable claims upon which relief can be granted, and Plaintiffs' punitive damages allegations should be stricken because they are insufficiently pleaded and immaterial to this case.

WHEREFORE, Defendant FRONTIER AIRLINES, INC. respectfully prays that this Honorable Court grant its Motion to Join and Adopt Defendant Hallmark Aviation Services, L.P.'s Motion to Dismiss and Motion to Strike, and for any other relief this Court deems necessary and proper.

Date: September 25, 2020 Respectfully submitted, FRONTIER AIRLINES, INC.

By: /s/ Tara Shelke

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<sup>&</sup>lt;sup>1</sup> Plaintiffs have "intentionally omitted" Count I from their Amended Complaint. (ECF No. 6.)

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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2020, I caused the foregoing to be electronically filed with the United States District Court for the Eastern District of Missouri using CM/ECF System.

By: /s/ Tara Shelke

Counsel for Defendant FRONTIER AIRLINES, INC.